

EXECUTIVE SUMMARY

Introduction.

On September 5, 2014, the Iowa Supreme Court entered an order concluding a diploma privilege should not be adopted for Iowa's two law schools. The order then directed the Iowa Board of Law Examiners to make recommendations on whether the Uniform Bar Examination (UBE) should be adopted, whether law students should be allowed to take the Iowa Bar Examination during their third year of law school (3L testing), and whether there are other adjustments or changes that should be made to the bar admission process.

The board has diligently studied the assigned topics and has prepared the attached report and recommendations. In doing so, the board solicited comments from the Iowa State Bar Association (ISBA), the deans of the University of Iowa, Drake University, and Creighton University law schools, and all active Iowa attorneys. The requests for comment included study materials and a staff memorandum on the UBE and 3L testing. The board received over one hundred comments. The comments solidly favored adopting the UBE, but a slight majority opposed 3L testing.

The board met with representatives of the National Conference of Bar Examiners (NCBE) on October 29, 2014 to discuss the details of the UBE and the conditions a state must meet to join the UBE. Individual board members met with law school representatives from the University of Arizona and Arizona State University to discuss Arizona's 3L testing pilot project. The board also gathered information on both 3L testing and the UBE from Arizona Supreme Court Justice Rebecca Berch and Arizona's admissions director, Emily Holliday. Our board's admissions director surveyed his counterparts from the UBE states, and discussed 3L testing with current and former admissions directors from Georgia, the last state to allow 3L testing until Arizona's pilot project.

Recommendations.

After careful review, the board recommends the Iowa Supreme Court should adopt the UBE. We currently administer all three components of the UBE: the multistate bar examination (MBE), a 200-question multiple choice test; the multistate ethics examination (MEE), six essay questions; and the multistate performance test (MPT), two lawyer skills tests based upon a client file and a library of legal materials. The board believes this bar examination does what it is supposed to do – it tests whether the applicant possesses the minimum competence to practice law. The board finds the additional steps needed to become a UBE state are not onerous, and the benefits of score portability to our law students, prospective rural practitioners, law firms, and former Iowa attorneys seeking to return to Iowa far outweigh any detriments.

If the court adopts the UBE, the board recommends the transfer and banking of MBE scores be curtailed, and all applicants should be required to take the UBE. The board does not recommend raising the passing score at the

same time the UBE is adopted. UBE passing scores range from 260 to 280, and the most frequent passing score is 270. Iowa's passing score is 266. At some point the court should review whether the passing score should be raised to 270. However, the board would like to gauge the effect of adopting the UBE and curtailing MBE banking and transferring before reviewing whether the passing score should be changed.

The board suggests the fee for a transferred UBE score should be the same as the admission on motion fee, and recommends applicants be allowed to transfer in a UBE score within two years of the exam. The transfer period could increase to five years if they can demonstrate two years of regular practice of law immediately preceding the transfer petition. That would bridge the gap between admission by examination and admission on motion. All transfer applicants would be subject to a complete character and fitness evaluation.

The Board further finds 3L testing shows promise as a path for law students to reduce debt by allowing them to enter the profession immediately after graduation. At the same time, it ensures the public is protected by requiring the applicants to pass a comprehensive bar examination. While the Arizona 3L testing pilot project is not complete, it has been extended an additional two years and by all accounts has been a success. However, it is clear to the board that our law schools must be invested in the process for 3L testing to succeed.

Drake University and the ISBA, strongly oppose 3L testing due to the potential for disruption of third-year curriculum and the sequence of courses, as well as potential ill effects on clinics, experiential learning, and even students who do not test. Georgia discontinued 3L testing for similar reasons.

The Arizona law schools had to make significant revisions to their curriculum to make 3L testing work. They suggest the students like the new curriculum better in some ways and claim the clinics have benefitted because students can participate full time after the examination. Creighton's dean indicates she is carefully studying the Arizona project, and Georgia is apparently doing so as well. In sum, although the board sees merit in 3L testing, it does not recommend its adoption until the law schools embrace it on behalf of their students.

Drake University and the ISBA also seek reconsideration of the diploma privilege. The court's order unanimously rejected the diploma privilege after a comprehensive study and a public hearing. The court did not ask the board to address that issue. To the extent a response is needed, the board does not recommend the adoption of a diploma privilege. The public deserves to have lawyers who have passed a valid, comprehensive examination, hold a JD or an LLB degree from an ABA-approved law school, and possess the requisite character and fitness.

Finally, the board recommends the court urge law schools to adopt an Iowa practice and procedure course that can be taken by applicants who intend to practice law in Iowa.